

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 77 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

and

MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

COMMISSIONER OF INCOME TAX

Versus

MUNIRKUMAR B. DALAL TRUST

Appearance:

MR MANISH R BHATT for Petitioner

MR HM TALATI for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and

MR.JUSTICE S.D.PANDIT

Date of decision:13 /09/1996

ORAL JUDGEMENT(per : Pandit.J)

The Inncome-tax Appellate Tribunal , B.Bench,
Ahmedabad has referred the following two questions at the

instance of the revenue for the opinion of this court.

"1. Whether on the facts and in the circumstances

of the case, the Tribunal was right in law in coming to the conclusion the status of the assessee is Association of Persons and entitled to deduction under section 80C and 80L of the I.T.Act, 1961 ?

2. Whether , on the facts and in the

circumstances of the case, the Tribunal was right in law in coming to the conclusion that the legal expenses incurred in connection with the Estate Duty matter are allowable u/s 57 of the I.T.Act, 1961 ? "

2. The assessee in this case is Munirkumar

B.Dalal Trust and the A.Y. involved is 1977-78. The Income-tax Officer, Circle-IV, Ahmedabad had rejected the assessee's claim for status of Associations of Persons (AOP) and had taxed it in the status of individuals. He had also disallowed the claim of deduction of Rs. 975/which was paid to an advocate for appearing in the estate duty matter before the Supreme Court. He did not allow the said claim by observing that the assessee had not made expenses for any liability under the Income-tax Act. The appeal preferred by the assessee was allowed by the Appellate Assistant Commissioner in respect of both the claims. Being aggrieved by the said decision the revenue went in appeal before the Income-tax Appellate Tribunal but the said appeal has been rejected and therefore, at the instance of the revenue the above questions are referred to this court.

3. It is an admitted fact that the view taken by the Appellate Assistant Commissioner for the previous A.Y. of treating the assessee as A.O.P. was confirmed by the Income-tax Appellate Tribunal in ITA 721/AHD/1980. The revenue had not challenged the said order of the Tribunal by seeking a reference to this Court. Therefore, that decision has become final when once the revenue has accepted the status of the assessee as AOP in the previous year. The contention raised on behalf of the revenue to dispute the said status of assessee for the next year could not be entertained and allowed as the claim of the revenue is hit by the general principles of constructive resjudicata. We are aware that the provisions of Civil Procedure Code are not applicable to the proceedings under the Income-tax Act. Similarly provisions of Civil Procedure Code are not applicable to

the writ petitions under the Constitution of India. But even then it has been held on numerous occasions by the Apex Court that the general principle of constructive resjudicata would be applicable on the principle of natural justice. Therefore, in our view the claim of the revenue to dispute the status of the assessee as AOP is barred by the general principles of constructive resjudicata.

4. Now apart from the above technical aspects of the matter it must be further mentioned here that the assessee in this case is a Trust. The executor or trustee would constitute as AOP and they do not retain any separate status or identity as individual. The Division Bench of this court in the case of Commissioner of Income-tax vs. Deepak Family Trust No.1 & ors. 211 ITR 575 has laid down the following principles.

"The word "association" means "to join in any purpose" or "to join in action". Therefore, "association of persons" as used in section 2(31)(v) of the Income-tax Act, 1961 means an association in which two or more persons join in a common purpose or common action. The Association must be one the object of which is to produce income profits, or gains. In the case of discretionary trust, neither the trustees nor the beneficiaries can be considered as having come together with the common purpose of earning income. The beneficiaries have not set up the trust. The trustees derive their authority under the terms of the trust deed. They are merely in receipt of income. The mere fact that the beneficiaries or the trustees, being representatives assessee, are more than one, cannot lead to the conclusion that they constitute an association of persons. The trustees of a discretionary trust have to be assessed in the status of "individual" and, consequently, deduction under section 80L, of the Income-tax Act 1961, is allowable to them."

Therefore, the contention of the revenue stands negatived by the above decision of the Division Bench of this Court and we are fully in agreement with the said decision of the Division bench of this Court. There are no grounds to differ from the said view. It must be also mentioned that the learned standing counsel for the revenue had

also fairly conceded that when the above said decision of the division bench was cited the first reference will have to be answered in the affirmative and against the revenue.

5. The next contention is as regards the allowance of the expenditure incurred in connection with the estate duty matter. It is urged before us by the learned counsel for the department Mr. Mihir Thakore that in view of the decision of Division Bench of this Court in the case of Virumati Ramkrishna vs. CIT, Gujarat-III 131 ITR 659 and the decision of the Apex Court in the case of Padmavati Jaikrishna vs. Addl. C.I.T.(G) 166 ITR 176 said expenditure could not be allowed. Before considering the said cases cited before us it is necessary to mention here certain admitted facts in the case before us. The assessee in this case is a Trust and claim of estate duty was made in respect of the amount of insurance payable on account of the accidental death of the person who created the Trust and which were payable under the insurance policy taken by the deceased. The trustees had to fight out claim of estate duty upto the Apex Court and the said dispute is reported in the case of Bharatkumar Manilal Dalal vs. Controller of Estate Duty Gujarat 164 ITR 231 the Supreme Court has allowed the claim of accountable person that the amounts were not liable to estate duty under the Estate Duty Act 1953. It must be remembered that admittedly the said claim was made against the whole estate and the trustee had to contest the same and it was not a claim of estate duty individually or personally either against the trustee or beneficiary. The Division Bench of this Court in the case of VIRUMATI (Supra) after analysing the statutory language as well as the principles laid down in various cases has laid down the following propositions:

- (I) In order to decide whether an expenditure is a permissible deduction under s. 57(iii), the nature of the expenditure must be examined.
- (II) The expenditure must not be in the nature of capital expenditure or personal expenses of the assessee.
- (III) The expenditure must have been laid out or expended wholly and exclusively for the purpose of making or earning "income from other sources"
- (IV) The purpose of making or earning such income must be the sole purpose for which the

expenditure must have been incurred, that is to say, the expenditure should not have been incurred for such purpose as also for another purpose, or for a mixed purpose.

(V) The distinction between purpose and motive must always be borne in mind in this connection, for, what is relevant is the manifest and immediate purpose and not the motive or personal considerations weighing in the mind of the assessee in incurring the expenditure;

(VI) If the assessee had no option except to incur the expenditure in order to make the earning the income possible, such as when he has to incur legal expenses for preserving and maintaining the source of income, then, undoubtedly, such expenditure would be an allowable deduction; however, where the assessee has an option and the option which he exercises has no connection with the making or earning of the income and the option depends upon personal considerations or motives of the assessee, the expenditure incurred in consequences of the exercise of such option cannot be treated as an allowable deduction.

(VII) It is not necessary however, that the expenditure incurred must have been obligatory; it is enough to show that the money was expended not of necessity and with a view to an immediate benefit to the assessee but voluntarily and on the ground of commercial expediency and in order indirectly to facilitate the making of earning of the income.

(VIII) If therefore, it is found on application of the principles of ordinary commercial trading that there is some connection, direct or indirect but not remote between the expenditure incurred and the income earned, the expenditure must be treated as allowable deduction.

(IX) It would not however, suffice to establish merely that the expenditure was incurred in order indirectly to facilitate the carrying on the activity which is the source of income; the nexus must necessarily be between the expenditure incurred and the income earned.

(X) It is not necessary to show that the

expenditure was profitable one or that in fact income was earned;

(XI) The test is not whether the assessee benefited thereby or whether it was a prudent expenditure which resulted in ultimate gain to the assessee but whether it was incurred legitimately and bonafide for making or earning the income.

(XII) The question whether expenditure as laid out or expended for making or earning the income must be decided on the facts of each case, the final conclusion being one of law."

If the claim of the assessee is examined in the light of the above principles, then there would be no difficulty in allowing the claim of the assessee. The expenditure in question was not any personal expenses of assessee and the same were expended only and exclusively for the purpose of saving the estate and thereby saving of income was possible. There was no option for the assessee than to incur the said expenditure and the monies were expended as it had been obligatory on the part of the assessee with a view to earn immediate benefit to the assessee. Even in the case of Padmavati Jaykrishna (Supra) it has been observed by the Apex Court that unless the loan is incurred for meeting the liability connected with the source itself, it would ordinarily be difficult to entertain the claim of deduction of interest paid thereon u/s. 57 of the I.T. Act. In that case the Supreme Court was considering the claim of the assessee as regards the claim towards the interest on the money borrowed by her. In that the Tribunal had recorded a factual finding that the expenditure had been incurred to meet her personal liability of payment of income tax and annuity deposits, and wealth tax and therefore, it had disallowed the said claim and the said decision of the Tribunal was upheld both by the High Court well as by the Apex Court. In the instant case the claim of the dispute as regards the liability of estate duty was not personal liability of the assessee and the said expenditure was incurred for preservation and protection of the assessee's property. If the assessee considers that the revenue seeks to take large share of income and to leave him too little, then he would be justified in disputing the claim of the revenue. The essential test which is to be applied is whether expenses were incurred for preservation and protection of the assessee's income and estate from any

such process or procedures which might have resulted in the reduction of his income . The Division Bench of High Court of Bombay in the case of Commissioner of Income-tax, Bombay H.H.Maharani Shri Vijaykuverba Sabeh of Morvi 100 ITR 67 had considered the question of expenses incurred towards the payment of estate duty chargeable on the trust property. In that case a trust was created by Maharaja on 6.10.55 and she died on 17.8.57. The trustees were treated as assessee and they were held to be liable to pay Rs. 8,25,300/- as estate duty and they had paid the same by borrowing the amount from Bank of India and they had paid interest to the bank in three A.Ys iv. 1959-60, 1960-61 and 1961-62 and had ultimately paid the whole amount in 1962. They had claimed the amount of interest as deduction and the claim has been allowed by the Division Bench by holding that the same was permissible u/s 12 of the Indian Income-tax Act 1922.

6. Thus in view of the above discussion we are of the view that the expenditure in question will have to be allowed in view of the peculiar facts and circumstances of the case. We therefore, answer the question no.2 also in favour of the assessee and against the revenue.

7. Thus in view of the above discussion and for the reasons stated above, we answer both the questions in the affirmative and in favour of the assessee by directing the parties to bear their respective costs.

(N.J.Pandya.J)

(S.D.Pandit.J)